

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-758

February 16, 1999

PUBLIC UTILITIES COMMISSION
Investigation into Use of Central
Office Codes (NXXs) by New England
Fiber Communications L.L.C. d/b/a
Brooks Fiber Communications

ORDER ADDRESSING
FURTHER PROCEEDINGS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. INTRODUCTION

At the January 13, 1999, hearing in this case, the parties indicated a willingness to attempt to negotiate a resolution of the issues. The Commission requested further comments from the parties addressing the possibility of such negotiations, as well as certain factual questions.

On the basis of the parties' comments and our evaluation of those comments, we establish the process described below for the further conduct of this case. We also discuss possible approaches and pricing principles that the parties should consider, as well as the question of whether and how long to maintain the status quo.

II. PROCEDURE

The deadline for presenting a stipulation or agreement to the Commission is May 15, 1999. We direct the parties to provide a schedule for their discussions (for review by the Hearing Examiner) and provide the Commission with status reports on the progress of the discussions on the 15th of each month following this order. We expect that Bell Atlantic and Brooks will take the lead in developing the schedule and format for the negotiations.

At least initially, the Commission staff will not participate in the discussions among the parties. If, after discussions have begun, one or more parties believe that participation by the Commission staff would be beneficial to the discussion or negotiation process, that party or parties may notify the Hearing Examiner in writing, provide a copy of the notification to other parties, and explain why the participation of the staff would be helpful. At that time, the staff will consider the request and consult with all parties that wish to participate in the discussion. Staff will participate if the Commission concludes that Staff's participation may be beneficial to the process.

III. POSSIBLE RESOLUTIONS FOR DISCUSSION

In conducting discussions concerning possible resolutions of this case, we request that the parties consider at least the following three options, the first of which was raised by the parties and discussed at the January 13th hearing. We request the parties also to address the application of the pricing considerations set out below in conjunction with their discussions of the possible resolutions. The parties are encouraged to discuss other possible resolutions that may advance their and the Commission's goals, as reflected in the Commission's existing orders and in the discussion among the parties and the Commission at the hearing. We do not, by making these suggestions, imply that we have concluded that these approaches are the only resolutions that the Commission would accept.

1. Remote Call Forwarding (RCF)

Under this option, present Internet Service Provider (ISP) customers of Brooks located in Brooks's Portland area exchange would remain Brooks customers. Customers of ISPs located in the Portland area would call the ISPs using Brooks's Portland area NXX. For locations outside its Portland calling area, Brooks would obtain remote call forwarding (RCF) from Bell Atlantic (in areas served by BA) or from independent Telephone Company (ITC) ILECs (in areas served by them). This RCF option would require customers to dial a local BA or ITC number which would be forwarded to Brooks's switch (which would be assigned its own NXX for routing purposes) in Portland. RCF would allow ISPs to maintain a presence outside of Brooks's Portland area exchange that would be toll-free to persons calling Brooks ISP customers. BA or ITCs would assign 7-digit numbers to the ISPs from their existing NXX codes. This option would require the use of one NXX code per CLEC switch location.

Using remote call forwarding in this manner would require a CLEC to pay for switching in the originating exchange and for transport from the remote area to the CLEC's switching location. Some contribution for the use of the local loop should also be considered in the discussions. This option would avoid the use of separate NXX codes for Brooks and other CLECs outside of the CLEC's actual switch location.

2. ILEC-CLEC 800-LIKE SERVICE

This configuration is identical to the first option, except that ISP customers would dial the CLEC's assigned NXX code. Each CLEC would use one NXX code per switch for all of its ISP customers served by that switch. Calls to that NXX code would be toll-free to callers. Called parties (the ISPs) would pay for the service. Calls would be routed by BA and the ITCs to Brooks's (and other CLEC's) switches in Portland (or in other locations) and then to ISPs over CLEC facilities.

3. BA 800-LIKE SERVICE / RESALE BY BROOKS

Under this configuration, Bell Atlantic and ITCs would provide a single NXX code per interconnection location throughout the state. The switching and transport portion of the service

(at least from a facilities perspective) would be provided entirely by BA or the ITCs. Callers in non-Portland exchanges would place calls to an NXX that would be reserved exclusively for calls that will terminate at ISPs. The called party (the ISP) would pay for the service; no charges would be assessed on callers. With this configuration, it would be possible to use only one NXX for each called location (e.g, one for all CLECs in Portland; one for all CLECs in Bangor). The ILECs would route calls placed to the special NXX (or NXXs) either directly to the ISP or to a collocated CLEC which would use its own loops to connect the calls from the ILEC switch to the ISP(s).

CLECs could undertake this option by purchasing the service completely from BA and ITCs and reselling it to ISPs, or by purchasing special UNEs dedicated only to this purpose when CLEC loops are used. Pricing by BA and ITCs, whether at retail or wholesale, could take into account the pricing principles implied in 35-A M.R.S.A. § 7104(4), which are discussed below.

III. PRICING CONSIDERATIONS

For any of the possible resolutions discussed above (or for any other resolutions the parties may consider), we request that the parties consider the following pricing issues and principles:

1. Much of the traffic that is subject to the investigation in this case is "interexchange," as defined traditionally by present Commission policy (Chapter 280) and by ILEC tariffs that conform to that policy. Such traffic, if "wholesale," is subject under Chapter 280 to access charges and, if retail, is subject to toll charges under ILEC tariffs. We note, however, that unlike other forms of interexchange traffic, traffic directed to ISPs is unlikely to "displace" toll traffic now carried by the ILECs or the IXC's.

2. Some of the traffic subject to this investigation may be "local," as defined traditionally and by current Commission rules.

3. The traffic that is the subject of this investigation is currently routed to ISPs over loops and interexchange trunking facilities owned and maintained by Bell Atlantic and other ILECs. At present, Brooks is not paying for that inward trunking; indeed, the BA-Brooks Interconnection Agreement (IA) requires that BA pay Brooks for terminating traffic that Brooks characterizes as local.

4. The traffic that may be subject to any resolution in this case is routed to ISPs and then to the Internet, or to other computer-based information services and information networks described in 35-A M.R.S.A. § 7104(4). That section may justify special pricing for the carriage of such traffic, regardless of whether the traffic would otherwise fall within an existing category.

IV. INTERIM MAINTENANCE OF THE "STATUS QUO"

The parties have commented on the meaning and continuation of the "status quo" concerning the routing and rating of calls delivered to ISPs served by Brooks. Except for the OPA, the parties substantially agree that, in the spirit of pursuing cooperative discussions, the status quo should be maintained, at least during the initial stages of discussions. By agreeing to

continue of the present situation, we realize that the parties do not necessarily agree that the status quo is the proper solution, nor is any party relinquishing its right to argue for an alternative outcome later in this, or any other, proceeding.

We understand that BA and other ILECs may not be currently handling traffic to ISPs served by Brooks in the same manner. BA is apparently allowing all calls to be completed on a toll-free, but we are unsure if BA has actually paid Brooks the terminating interconnection charges specified in the IA for this traffic. According to the latest information provided by the Telephone Association of Maine, two ITCs are apparently allowing calls placed to Brooks's "allegedly local" NXXs that are within the ITC's BSCA area to go through to ISPs in Brooks's Portland area exchange toll-free, but the majority of ITCs are blocking such traffic. The OPA has recommended that all ILECs be required to open up the "allegedly local" NXX codes used by Brooks for routing traffic. We will deny the OPA's recommendation and accept, at least for the initial 90-day discussion period, the other parties' recommendation that the status quo be preserved. During this time, Brooks may not obtain any additional NXX codes, and other CLECs may not obtain new codes of their own for the purpose of providing service in a manner similar to Brooks. Brooks is free to pursue new customers or expand its service to its current customers, but it must not do so in a manner that would prevent the return of its NXX codes at some point in the future, should that be either agreed to or ordered.

V. ORDERING PARAGRAPHS

Accordingly, we order that the parties to this docket commence discussions immediately for the purpose of attempting to resolve the issues that were discussed at the January 13 hearing and in this document. The parties should proceed in accordance with the terms and principles spelled out in the body of this order and should report to the Commission at the intervals described above.

Dated at Augusta, Maine this 16th day of February, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond